IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLN.NO.241 OF 2006

Mr.Santosh Shankar Aushikar ..Applicant

Vs.

The State of Maharashtra ..Respondent

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Mr.N.V.Gangal advocate for applicant
Mr.V.B.Konde-Deshmukh, A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 30, 2007

P.C.

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant-original complainant has challenged the judgment and order dated 27.4.2006 passed by Judicial Magistrate F.C. Nasik Road in Regular Criminal Case No. 199 of 2005 (Old Summary Cri.Case No.1920 of 2003). By the said judgment and order, the accused nos.1 to 7 came to be acquitted of the offences under Sections 143, 147, 148 r.w. 149, 323, 504, 506 of IPC and under Section 37(1) r.w. 135 of the Bombay Police Act.

3. I have perused the judgment and order dated

27.4.2006, the evidence of witnesses and the medical certificates which have been produced by the learned advocate for the applicant.

4. As far as offences under Sections 504 and 506 r.w. 34 of IPC are concerned, neither the complainant nor any of the witnesses have stated about the specific abuses or threats being given to them. As far as offence under Section 323 of IPC is concerned, it is the case of the prosecution that P.W.5 Sunanda Aushikar, P.W.7 Anusaya Aushikar, P.W.2 Kiran Aushikar, P.W.1 Santosh Aushikar and other witnesses were injured in the incident. As far as complainant P.W.5 Sunanda is concerned, in her oral evidence, she has stated about some injuries but they are not the same as those mentioned in the medical certificate. P.W.5 Sunanda has deposed that due to the assault by the accused, her teeth were removed. However, no such injuries were mentioned in the injury certificate. Moreover, the medical certificate was issued two and half years after the date of incident. The injuries stated by P.W.5 Sunanda do not tally with the injuries mentioned in the injury certificate. It is admitted by her that she has not disclosed to

the police that in the said incident her teeth were removed. In her examination in chief, she has deposed that the accused beat her by fist blows. However, in cross-examination, she has deposed that accused assaulted her by means of sticks. Thus her evidence is not found to be reliable.

5. As far as witness P.W.2 Kiran Aushikar is concerned, it is his case that he was assaulted by means of stick and he had pain over thumb and bodyache. However, no evidence of injuries to corroborate the same, was led. As far as P.W.7 Anusaya Aushikar is concerned, it is her case that a blow was given to her on the right cheek, ear and abdomen. However, no injuries were found on her person. As far as P.W.1 Santosh is concerned, abrasions were found on the right knee, left arm and right index finger. As far as witness Shashikala is concerned, it is her case that she was assaulted on the left knee. However, no visible injury was noticed. Thus, it is seen that as far as all the witnesses except Santosh, are concerned, either injuries deposed by them, are not corroborated by the medical evidence or no injuries were seen on their person. As far as Santosh is

concerned, in the facts of this case and the evidence on record, it would be dangerous to rely on his sole testimony, as the evidence of the other witnesses is not found reliable. Looking to these facts, the learned Magistrate has acquitted the Respondents.

6. Looking to the evidence on record, it appears that the view taken by the learned Magistrate was a reasonable and possible view.

7. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C. Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary

opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view, hence, no interference is called for.

8. In this view of the matter, revision application is rejected.

[SMT.V.K.TAHILRAMANI, J.]